

## Sincock, Jennifer

---

**From:** Sincock, Jennifer  
**Sent:** Wednesday, January 11, 2017 12:00 PM  
**To:** 'Benjamin Kirby'  
**Cc:** Day, Christopher; Tate, Rita; MacKnight, Evelyn; Gold, Peter; Lewis, Tanya; Richardson, William; prosenman@hall-associates.com; 'acarlesco@hall-associates.com'  
**Subject:** RE: FOIA EPA-R3-2017-000718 Letter Requesting Assurance of Payment to be sent by no later than January 12, 2017

Mr. Kirby,

Thank you for this assurance of payment for the estimated costs of \$800.00 to complete FOIA EPA-R3-2017-000718. As requested in your email, the revised estimated date of completion is February 2, 2017. Please let me know if there are any questions regarding this FOIA request. Thanks, Jen

Jennifer Sincock  
Office of Standards, Assessment, and TMDLs  
Water Protection Division  
U.S. EPA Region III  
1650 Arch Street (3WP30)  
Philadelphia, PA 19103  
(215) 814-5766

Check out the Chesapeake Bay TMDL website at: <http://www2.epa.gov/chesapeake-bay-tmdl>

---

**From:** Benjamin Kirby [mailto:bkirby@hall-associates.com]  
**Sent:** Wednesday, January 04, 2017 11:59 AM  
**To:** Sincock, Jennifer <Sincock.Jennifer@epa.gov>; prosenman@hall-associates.com  
**Cc:** Day, Christopher <Day.Christopher@epa.gov>; Tate, Rita <Tate.Rita@epa.gov>; MacKnight, Evelyn <MacKnight.Evelyn@epa.gov>; Gold, Peter <Gold.Peter@epa.gov>; Lewis, Tanya <Lewis.Tanya@epa.gov>; Richardson, William <Richardson.William@epa.gov>  
**Subject:** RE: FOIA EPA-R3-2017-000718 Letter Requesting Assurance of Payment to be sent by no later than January 12, 2017

Ms. Sincock,

We agree to pay the fee of \$800 to complete FOIA request EPA-R3-2017-000718. When available, will you please provide a revised estimated date of completion?

Thanks,

---

Ben Kirby  
Environmental Engineer  
Hall & Associates  
1620 I St. NW, Suite 701  
Washington, DC 20006  
Work: (202) 463-1166  
Cell: (336) 337-7820

---

**From:** Sincock, Jennifer [<mailto:Sincock.Jennifer@epa.gov>]

**Sent:** Wednesday, December 28, 2016 4:19 PM

**To:** Phil Rosenman <[prosenman@hall-associates.com](mailto:prosenman@hall-associates.com)>

**Cc:** Benjamin Kirby <[bkirby@hall-associates.com](mailto:bkirby@hall-associates.com)>; Day, Christopher <[Day.Christopher@epa.gov](mailto:Day.Christopher@epa.gov)>; Tate, Rita <[Tate.Rita@epa.gov](mailto:Tate.Rita@epa.gov)>; MacKnight, Evelyn <[MacKnight.Evelyn@epa.gov](mailto:MacKnight.Evelyn@epa.gov)>; Gold, Peter <[Gold.Peter@epa.gov](mailto:Gold.Peter@epa.gov)>; Lewis, Tanya <[Lewis.Tanya@epa.gov](mailto:Lewis.Tanya@epa.gov)>; Adam Carlesco <[acarlesco@hall-associates.com](mailto:acarlesco@hall-associates.com)>; Richardson, William <[Richardson.William@epa.gov](mailto:Richardson.William@epa.gov)>

**Subject:** RE: FOIA EPA-R3-2017-000718 Letter Requesting Assurance of Payment to be sent by no later than January 12, 2017

Phil,  
Attached is a letter requesting a written assurance of payment for Freedom of Information Act (FOIA) Request EPA-R3-2017-000718 since EPA's revised estimated costs based on your email clarification to the original FOIA request will exceed your stated limit of \$250.00. Please send the assurance of payment for this FOIA request by no later than January 12, 2017 or we will assume that you are no longer interested in pursuing this request and will consider the request closed. An electronic copy of this letter will be uploaded to FOIAonline and a hard copy will be sent via U.S. mail.

Thank you,

Jennifer Sincock  
Office of Standards, Assessment, and TMDLs  
Water Protection Division  
U.S. EPA Region III  
1650 Arch Street (3WP30)  
Philadelphia, PA 19103  
(215) 814-5766

Check out the Chesapeake Bay TMDL website at: <http://www2.epa.gov/chesapeake-bay-tmdl>

---

**From:** Phil Rosenman [<mailto:prosenman@hall-associates.com>]

**Sent:** Wednesday, December 14, 2016 5:50 PM

**To:** Sincock, Jennifer <[Sincock.Jennifer@epa.gov](mailto:Sincock.Jennifer@epa.gov)>

**Cc:** Benjamin Kirby <[bkirby@hall-associates.com](mailto:bkirby@hall-associates.com)>; Day, Christopher <[Day.Christopher@epa.gov](mailto:Day.Christopher@epa.gov)>

**Subject:** RE: FOIA EPA-R3-2017-000718

Thank you for your email, Jen.

H&A has the following responses:

1. H&A agrees to clarify the requests so as to include date limits. Specifically, ***please limit the above-referenced FOIA request to responsive documents generated from December 23, 2014 (date of second recon request) to September 8, 2016 (date of EPA's denial of second recon request).***
2. ***H&A declines to limit the request to preclude internal EPA emails.*** While H&A understands that – in EPA's opinion – many of its responsive emails are deliberative, H&A would nonetheless like the request to include all emails. This will ensure H&A is provided with all non-deliberative emails and the means for H&A to determine whether it agrees with EPA's decision to withhold the remaining emails. On this issue, H&A would remind the Region that neither historical/factual/scientific information nor documents detailing the who, what, and when of the Agency's reconsideration can be lawfully withheld under the deliberative process. *See Coastal States Gas Corp., v. Department of Energy*, 617 F.2d 854, 867 (D.C. Cir. 1980) ("the privilege applies only to the 'opinion' or

'recommendatory' portion of [a document], not to factual information which is contained in the document"); see also *Hall & Assocs. v. EPA*, 846 F. Supp. 2d 231, 244 (D.D.C. 2012) (same).

3. ***H&A does not have any further clarifications to the request.***

Please regard this as H&A's official clarification. To the extent the Agency requires a formal letter or something submitted using FOIA online, please let me know. We look forward to EPA's revised cost estimate.

Regards,  
Phil Rosenman

---

**From:** Sincock, Jennifer [<mailto:Sincock.Jennifer@epa.gov>]  
**Sent:** Tuesday, December 13, 2016 1:52 PM  
**To:** Phil Rosenman  
**Cc:** Benjamin Kirby; Day, Christopher; MacKnight, Evelyn; Gold, Peter; Lewis, Tanya; Tate, Rita; Adam Carlesco  
**Subject:** RE: FOIA EPA-R3-2017-000718

Hi Phil,

Thank you for your email and voicemail requesting a conversation to discuss the possibility of clarifying or refining this FOIA request to reduce estimated costs shown in the attached letter dated November 29, 2016 requesting assurance of payment. Earlier today, we had a phone call to discuss possible ways to refine this FOIA request. As promised, I'm providing the following notes to document this conversation. Please let me know if there are any clarifications needed.

**Notes from December 13, 2016 call between Jennifer Sincock at EPA and Phil Rosenman at Hall and Associates regarding FOIA Request EPA-R3-2017-000718**

Mr. Rosenman stated up front that he is still interested in pursuing this FOIA request and does not want it closed even though today (December 13, 2016) is the deadline to respond to EPA's letter requesting assurance of payment. I told him that we are now in negotiations to refine the FOIA request to reduce costs. Next steps will include sending an email documenting this conversation with a request for Hall and Associates to refine this FOIA request.

- 1) EPA's review, consideration, and evaluation of Telford's second reconsideration request included consideration of the 2008 Indian Creek TMDL, all endpoint documents prepared by EPA's contractors, and the first Indian Creek reconsideration. This broad reading of the FOIA request will require searching numerous potential responsive records dating back to 2007 if not before. Additionally, many of these records may be deliberative and/or otherwise exempt from disclosure and would likely require redactions of certain documents and/or preparation of a list of withheld documents. EPA has also provided many of these documents previously and would need to provide documentation of these previous releases. The bulk of the cost estimate provided included search and review of these numerous potential responsive documents dating back to 2007. **Would Hall and Associates be willing to include date limits on this FOIA request? Perhaps from December 23, 2014 (date of second request) to September 8, 2016 (date of EPA's second reconsideration decision)?**
  - a. Response: Mr. Rosenman was amenable to idea of date limits but wants some time to consider before responding. He is not interested in searching or paying for records previously received. He can understand how EPA would see this as a potentially broad request for documents that EPA considered during the second reconsideration (including documents all the way back to the TMDL). This FOIA request was meant to request documents reviewed by EPA regarding Telford's second reconsideration request dated December 23, 2014 which included a technical report prepared for his client.

- 2) For potential records from December 23, 2014, many of the internal analyses, memoranda, emails, evaluations and discussion summaries may be deliberative and/or otherwise exempt from disclosure and would likely require redactions of certain documents and/or preparation of a list of withheld documents. These records are voluminous with emails accounting for the bulk of potentially responsive documents. **Would Hall and Associates be willing to revise their FOIA request to emails exchanged between EPA and external parties such as PADEP?**

- a. Response: Mr. Rosenman was not sure on this question and does not want to limit possible non-deliberative emails. He will consult with his client and get back to us.

- 3) **Does Hall and Associates have any other recommendations to refine their FOIA request to reduce costs?**

- a. Response: Mr. Rosenman did not have any recommendations at this time.

If Hall and Associates is willing to refine this FOIA request, please do so in writing by no later than December 28, 2016 or we will assume that you are no longer interested in pursuing this request and will consider the request closed. Once the refined FOIA request is received, EPA will revise its cost estimate and send it to Hall and Associates with a request for assurance of payment. Please let me know if there are any questions regarding this FOIA request. Thanks, Jen

Jennifer Sincock  
Office of Standards, Assessment, and TMDLs  
Water Protection Division  
U.S. EPA Region III  
1650 Arch Street (3WP30)  
Philadelphia, PA 19103  
(215) 814-5766

Check out the Chesapeake Bay TMDL website at: <http://www2.epa.gov/chesapeake-bay-tmdl>

---

**From:** Phil Rosenman [<mailto:prosenman@hall-associates.com>]  
**Sent:** Thursday, December 08, 2016 4:49 PM  
**To:** Sincock, Jennifer <[Sincock.Jennifer@epa.gov](mailto:Sincock.Jennifer@epa.gov)>  
**Cc:** Benjamin Kirby <[bkirby@hall-associates.com](mailto:bkirby@hall-associates.com)>  
**Subject:** RE: FOIA EPA-R3-2017-000718

Hi Jen:

I was unable to reach you by phone today, so I'm opting to email instead. Our office is in receipt of R3's price assurance request on the above-referenced FOIA. As you are listed as the point-person on the request, we are directing our concerns to you.

Having submitted countless FOIA requests to the Agency over the years, I fully appreciate the time and energy that it takes to search and review responsive documentation. That being said, I believe the Agency's recent price assurance request exceeds the boundaries of what is reasonable under the circumstances. As you know, the request sought the documentation regarding the Region's evaluation and subsequent denial of Telford's second reconsideration request of the Indian Creek TMDL. I don't see how it could take almost \$1,700.00 to respond to this straightforward request, particularly the 44.7 hours of professional search/review time estimated by the Region. While the 12 hours of time estimated for the managers/regional counsel to review the documentation for potential exemptions might be plausible, the initial responsiveness determination should be simple: either the documents pertain to Telford's reconsideration request or they do not.

Your letter references the possibility of clarifying or refining the request in a manner that would reduce the cost. If there is a way for us to clarify the request such that it alleviates some of the burden on the Agency without materially affecting the scope of the request, we would certainly be interested in such measures. As it stands, however, H&A will likely be forced to appeal this price assurance, which is a waste of time and energy for all parties involved (including our municipal client).

If you have any thoughts or ideas, I'd love to hear them.

Regards,  
Phil

Philip Rosenman, Esq.  
Senior Associate  
Hall & Associates  
1620 I Street, NW  
Suite 701  
Washington, DC 20006  
p.202.463.1166  
f.202.463.4207  
[prosenman@hall-associates.com](mailto:prosenman@hall-associates.com)

***The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.***